IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL APPEAL NO. 24 OF 2001

Lalsab Palton, s/o
Mugumtub Palton, 37 years,
labourer, presently in
custody at Central Jail,
Aguada, Goa. ...Appellant.

Versus

S T A T E of Goa
(through Public Prosecutor) ...Respondent.

Shri V. A. Lawande, Amicus Curiae for the appellant.

Shri S. N. Sardessai, Public Prosecutor for the State.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, JJ.

DATE: 17th February, 2003.

ORAL JUDGMENT (Per D. G. Deshpande, J)

Heard learned advocate for the appellant/accused, who was appointed by us as Amicus Curiae and the learned Public Prosecutor for the State. The appellant/accused has challenged his conviction under Sections 302 and 307 of the Indian Penal Code, by which he was to suffer sentence of imprisonment for life and imprisonment for five years, respectively. The Judgment of the trial Court was delivered by the Ist Additional Sessions Judge, Panaji, on 25th July, 2000.

2. The appellant/accused was tried for committing murder of one Pradeep Salgaokar on 29th January, 1999, between 19.30 hours to 20.30 hours and also injuring one Mahadevi Patil, P.W.4, in the quarrel, with the help of a knife. It was the case of the prosecution that Mahadevi

Patil, P.W.4, had sexual relations with the deceased Pradeep Salgaokar as also with the accused. The accused was asking her to give up her relations with the deceased Pradeep Salgaokar. On 29th January, 1999, Pradeep Salgaokar went to see Mahadevi Patil, P.W.4. When they were talking with each other in a room on the first floor of a building under construction, where there was nobody and where there was darkness, the accused is alleged to have come there. An altercation between Pradeep Salgaokar, deceased and the accused followed, over the issue. There was a quarrel between the accused and the deceased Pradeep Salgaokar and in that quarrel the accused is alleged to have assaulted Pradeep Salgaokar with the knife. Then Pradeep Salgaokar, the deceased, ran helter-skelter. He tried to get down to the ground floor with the help of a bamboo stick,but the bamboo stick broke and he slipped and fell on the surface of the septic tank, resulting in a fracture of the skull. The matter was reported to the Police, investigation was carried out, which included preparing the panchanama of the scene of the offence, panchanama of the inquest, recording statements of eye-witnesses, sending the body for post-mortem, arresting the accused, recovering the weapon and blood-stained clothes under Section 27 of the Evidence Act, sending the muddemal to the Chemical Analyser and sending the victim Mahadevi Patil to the hospital.

3. After completion of the investigation, chargesheet was filed. During the trial, the prosecution examined sixteen witnesses. The defence of the accused was that of total denial. However, the trial Court accepted the case of the prosecution and convicted the accused/appellant. Hence, this appeal.

4. According to the learned advocate for the accused, two witnesses for the prosecution are main and important. they are P.W.4, Mahadevi Patil and P.W. 5, Nagraj Shiv M. Khanai, a young boy, who was 13 years of age and, according to him, if both these witnesses are disbelieved, for which there are reasons, according to him, then the accused is entitled for acquittal. He, further contended that the circumstances on record do indicate that it might be Mahadevi Patil, P.W.4, who assaulted the deceased. However, alternatively, his submission was that the circumstances brought on record do show that it was a sudden quarrel and in heat of passion and anger the accused inflicted a fatal blow on the person of the deceased Pradeep Salgaokar and, therefore, the accused could not have been convicted under Section 203 I.P.C. and therefore, his conviction could be alternatively under Section 304 Part II of the I.P.C.

5. So far as the first leg of the argument is concerned, we are not in agreement with him that the victim

Pradeep Salgaokar could have been assaulted by Mahadevi Patil, P.W.4. There are no circumstances at all coming on record from the evidence of Pradeep, P.W.4 or Nagraj, P.W.5, to even remotely suggest that Mahadevi Patil, P.W.4 could be the assailant. Firstly, there is no reason for Mahadevi, P.W.4, to assault Pradeep Salgaokar. She has candidly admitted that she was having relations with Pradeep Salgaokar as husband and wife and she had similar relations with the accused also. She has stated that the accused did not like her relations with the deceased Pradeep Salgaokar and he was asking her to give up her relations with Pradeep and marry him.

6. She has further stated that on 29th January, 1999, i.e. the date of the incident she did not go to work at the construction site at Calangute. On the contrary, she worked at the house of one Hoble for washing utensils and she returned in the evening. Nagraj, P.W.5, was there and Nagraj, P.W.5, is her sister's son. At about 6 p.m. she went to fetch water, brought the water in a pot and when she returned, she saw that Pradeep Salgaokar, deceased was in her house. She was residing in a hut next to the building under construction i.e. the building where the murder took place. Pradeep Salgaokar went to the first floor of the building under construction and then she followed him. There on the first floor she had some talk with Pradeep Salgaokar and after sometime, the

appellant/accused came there. The accused started quarrelling with Pradeep Salgaokar and went to assault him. She was trying to persuade the accused not assault Pradeep Salgaokar, but the accused gave her a blow with the knife on her stomach and then assaulted Pradeep Salgaokar on the chest with the same knife. Pradeep Salgaokar started running as the accused was continuing to assault him. He went near the window where there were bamboo sticks and he was getting down with the help of the bamboo sticks when he slipped and fell on the septic tank and then the accused disappeared. However, in the meantime, Nagraj, P.W.5 had come to the first floor.

7. From the aforesaid evidence of this witness and even from her cross-examination, it cannot at all be inferred or suggested, that she assaulted Pradeep Salgaokar,the deceased. Firstly, there is no suggestion and secondly, she had no reason to assault Pradeep Salgaokar, becaue she had voluntarily gone to see Pradeep on the first floor and nothing is brought on record to show that she had any animus against Pradeep Salgaokar, or wanted to get rid of him in order to marry the accused, or to continue relations with the accused, to the exclusion of Pradeep Salgaokar. This argument of the learned advocate for the accused has, therefore, to be rejected. So far as the case of murder is concerned, P.W.4, Mahadevi Patil, is fully corroborated by P.W.5, Nagraj. Nagraj has stated

that on that day, he and his grandmother had gone to the super market and he returned with her after sometime. Then he heard some noise on the first floor of the building under construction. He, therefore, went to the first floor and he saw that the accused and the deceased Pradeep Salgaokar were fighting with hands and P.W.4, Mahadevi Patil, was also present there. He also stated that he saw the accused with a knife in his hand and P.W.4, Mahadevi Patil, was trying to persuade the accused not to do anything to Pradeep Salgaokar. He has further stated that when P.W.4, Mahadevi Patil, went to the rescue of Pradeep Salgaokar, the accused stabbed her on the stomach and then the accused gave one blow with the knife on the chest of Pradeep Salgaokar on the left side. Pradeep Salgaokar then started running from one window to the other trying to escape the attack because the accused was assaulting him. Then Pradeep Salgaokar went out of the window with the help of a bamboo stick. The bamboo stick broke and Pradeep Salgaokar fell on the septic tank. It will therefore be clear that P.W.5 fully corroborates P.W.4. The cross-examination of P.Ws. 4 and 5 is exhaustive, but it is only for bringing contradictions and omissions in their statements. However, firstly contradictions and omissions are not material. Secondly, and surprisingly, those contradictions mostly pertain to what is stated to the Police and what is not there in the statement recorded by the Police. The contradictions are not with reference to

the statement of the witnesses in the Court and the statement they gave to the Police during the investigation. For example, P.W.4 has stated in the cross-examination, "I told the Police that Pradeep was getting down from the bamboo sticks and he slipped and fell on the septic tank". In the statement before the Police, it is mentioned that Pradeep while getting down from supporting bamboo of the window fell down. In the same manner a number of contradictions are brought on record, but they are not with reference to what the witness stated in Court. In fact, the attention of the witness should have been drawn firstly to that part of her statement in Court which was contradictory to her statement before the Police, then she should have been asked whether she gave such a statement to the Police and then her explanation should have been sought about the omission or contradiction.

8. When confronted with this legal position, the learned counsel for the appellant/accused conceded that contradictions in the evidence of P.W. 4 and P.W. 5 are not brought on record properly.

9. Even if this cross-examination so far as it relates to contradictions and omissions is looked at from a different angle and the contradictions are taken into consideration, they do not help the accused at all. Contradictions are mostly about the details and not about

the substance. For example, P.W.4, Mahadevi, was asked whether she had stated to the Police that Nagraj, P.W.5, was on the first floor of the building, with reference to the omission of this portion in the contradiction. Same is the case with the cross-examination of P.W.5, Nagraj.

10. However, so far as relations between P.W.4 with the deceased Pradeep and the accused and the incident that took place on the first floor of the building under construction, nothing is brought on record to create doubt about the same story. Eventhough Nagraj is a boy of 13 years age on the date of deposition in the Court, he withstood the cross-examination and no doubt could be created about his integrity or character. No motives could be attributed to him to falsely implicate the accused. It could not also be suggested that he was a chance witness or that he had no occasion to go to the place of the incident. P.W. 4 has stated that Nagraj, P.W.5, is the son of her sister Laxmi. His statement was recorded by the Police immediately, because he was with his grandmother. It was recorded at midnight. He has stated that he was knowing both Pradeep and the accused and about their frequent visits to Mahadevi, P.W.4. The contradictions or omissions brought on record are also on insignificant matters. For example, in the cross-examination it is stated that the noise which he heard on the first floor was of someone indulging in a wordy fight. When confronted with his

statement before the Police, he has stated that he had heard noise before the Police, but did not state that it was of a fight with words. Then he was again confronted with his police statement wherein he has stated that he saw the accused and Pradeep fighting, but did not state that he saw them fighting with hands. We do not find anything at all in the cross-examination of both P.W.4 and P.W.5 to accept the contention of the learned counsel for the appellant/accused that the evidence of both these witnesses is liable to be rejected. To the contrary, their evidence inspires confidence and it is rightly accepted by the trial Court.

11. The evidence of P.Ws.1 and 2 is strongly supported by the evidence of the doctor. So far as the deceased Pradeep is concerned, he was subjected to post-mortem examination conducted by P.W.7, Dr. E. J. Rodrigues. He has stated that the cause of death was injury no.1, which was on the chest. The deceased had other injuries because of the fall and his skull was broken, but the cause of death given in the post-mortem report is death due to haemorrhage and shock as a result of stab injury to the heart vide injury no.1 caused by sharp pointed penetrating cutting weapon. The injury no.1, according to the doctor, P.W.7, is fatal in the ordinary course of nature. The weapon that was recovered was also shown to the Dr. Rodrigues, P.W.7, and he opined that the

injury no.1 could be caused by the weapon, M.O. 14.

12. The most important fact in this case is that P.W.4, Mahadevi, herself, suffered injury at the hands of the accused by the same knife. Her injuries were also proved by producing evidence on record. She was admitted at the Hospital that suggests this. The injury was on her abdomen. P.W.5 supports that aspect. The presence of Mahadevi, P.W.4, as an eye-witness has to be accepted as a proved fact for all the above reasons.

13. Apart from the medical evidence and the evidence of the eye-witness, there is the evidence of recovery of the weapon and the blood-stained clothes at the instance of the accused. The clothes were found having human blood. Therefore, there is clinching evidence against the accused so far as killing of Pradeep Salgaokar and causing serious and grave hurt to Mahadevi, P.W.4, is concerned. Nothing more regarding the merits was urged and, therefore, we have to hold that the accused was responsible for the death of Pradeep Salgaokar and causing grave hurt endangering the life of Mahadevi, P.W.4.

14. However, the alternate argument of the learned counsel for the appellant/accused is that the assault in any case was not a premeditated one, but it was in a sudden fight without any intention and therefore

conviction of the accused can be altered to one under Section 304 Part II I.P.C., instead of under Section 302 I.P.C. It was submitted by him that admittedly, P.W.4., Mahadevi, was having illicit relations with both the accused and the deceased. The accused was not liking that and he was asking P.W.4 to sever the relations with Pradeep Salgaokar, the deceased so that the accused could marry her. On that day, it is also seen that when the accused went to see her, she was found on the first floor of the building under construction, with the deceased Pradeep. Thereafter a quarrel and scuffle followed between that two, i.e. the deceased and the accused and in that scuffle if the accused has used a weapon, then it could be said that there was grave and sudden provocation. As against this, the learned Public Prosecutor submitted that from the fact that the accused had carried a knife with him, that itself is a premeditated attack. We are not in agreement with the submission of the learned Public Prosecutor. For a premeditated attack, it was necessary for the prosecution to show and establish that the accused was knowing that on the date and time when the murder took place, P.W.4, Mahadevi, and the deceased were going to meet. The evidence of P.W.4 does not give any kind of suggestion in that regard. To the contrary, P.W.4, Mahadevi, had not gone for her regular duty on that day and it is, therefore, clear that her meeting with the deceased Pradeep on that day was not a pre-planned one, or at least to the knowledge

of the appellant/accused. Therefore, if, in the context of the relationship of P.W.4 with both the deceased and the accused, a quarrel took place between the deceased and the accused followed by a scuffle and then infliction of a single blow, then the case squarely comes under Section 304 Part II of the I.P.C.

15. We, therefore, allow the Appeal and pass the following Order:-

The Appeal is partly allowed. The conviction of the appellant/accused under Section 302 I.P.C. is set aside. He is convicted under Section 304 Part II of the I.P.C. and sentenced to undergo Rigourous Imprisonment for ten years. His conviction under Section 307 of I.P.C. with the sentence imposed by the lst Additional Sessions Judge, Panaji, is maintained. Both the sentences to run concurrently.

D. G. DESHPANDE, J.

P. V. HARDAS, J.

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